

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

EDGAR HERNANDEZ and FREDIS ALFARO,
for and on behalf of all others similarly situated,

Plaintiffs,
-against-

NJK CONTRACTORS, INC., NICK HATZIS and
KOSTAS GEORGIADIS,

Defendants.

CV-09-4812 (ARR)(RER)

**DECLARATION OF
LADONNA M. LUSHER**

LaDonna M. Lusher, an attorney duly admitted to practice law in the Eastern District of New York, hereby affirms under the penalties of perjury that:

1. I submit this declaration in further support of Virginia & Ambinder's ("V&A") Motion for Attorneys' Fees and Costs.
2. I am a Partner at V&A and am fully familiar with the facts and circumstances contained herein.
3. V&A respectfully requests an award of attorneys' fees in the amount of \$644,524.50 and costs in the amount of \$12,701.61.
4. A true and accurate contemporaneous billing statement is attached hereto as **Exhibit A**.
5. V&A spent almost six years litigating this case without any compensation. Litigation of this matter resulted in more than 2,442.10 hours of work by attorneys, paralegals, and accountants. Throughout this time, V&A communicated and met regularly with the Plaintiffs, served and responded to discovery, reviewed and digested Defendants' voluminous document productions, including contracts and certified payroll records, appeared for numerous court conferences, including two in person settlement conference before Magistrate Judge Mann and Judge Scanlon respectively, engaged in extensive

motion practice, including a motion to compel, motion for summary judgment, and motion *in limine*, and ultimately successfully took the case to trial. V&A also spent time opposing Defendants' motion to compel and extend discovery, and motion for summary judgment.

6. V&A's costs in the amount of \$12,701.61, as seen in Exhibit A, primarily consist of filing fees, service of process costs, legal research fees, costs associated with subpoenaing documents, court transcript costs, as well as substantial costs for translation services and copying for trial submissions and exhibits.
7. V&A has significant experience prosecuting large-scale wage and hour actions. A sampling of cases include: Espinoza v. 953 Assocs. LLC, 280 F.R.D. 113, 129-130 (S.D.N.Y. 2011) (Scheindlin, J.); Lujan v. Cabana Management, Inc., Index No. 10-cv-755 (E.D.N.Y. Feb. 1 2011) (Block, J.); Zepeda et al. v. Franari Produce Distributors Inc., et al., (EDNY 10-cv-2588) (Bianco, J.); McBeth, et al. v. Gabrelli Truck Sales Ltd., et al. (EDNY 09cv 4112) (Wexler, J.); Kopacz, et al. v. St. Paul Fire and Marine Insurance Co., et al., Index No.: 111154-2008 (Sup.Ct.N.Y.Co. 2011); Dabrowski v. ABAX Inc., 2010 NY Slip Op 31981U, aff'd 4 A.D.3d 633 (1st Dept. 2011); In re Penthouse Exec. Club Comp. Litig., 2010 U.S. Dist. LEXIS 114743 (S.D.N.Y. Oct. 27, 2010); Brieno v. USI Servs. Group, 2010 U.S. Dist. LEXIS 78672 (E.D.N.Y. Aug. 3, 2010); Cardona v. The Maramont Corporation, 2009 NY Slip Op 32695U (Sup.Ct.N.Y.Co. Nov. 12, 2009); Kudinov v. Kel-Tech Construction Inc., 65 A.D.3d 481 (1st Dept. 2009); Morris v. Alle Processing, Corp., Docket No. 08-CV-4874 (E.D.N.Y. Dec. 22, 2009); Nawrocki v. Crimson Construction, Docket No. 08-CV-3153 (E.D.N.Y. June 17, 2009); Cox v. Nap Construction Company, Inc., Index No. 11179/03 (Sup. Ct. N.Y. Co. 2004) (Cahn, J.), aff'd, 10 N.Y.3d 592 (2008); Galdamez v. Biordi Constr. Corp., 13 Misc. 3d 1224A

(Sup.Ct.N.Y.Co. June 8 2006), aff'd 50 A.D.3d 357 (Apr. 8, 2008); Gonzalez v. Nicholas Zito Racing Stable, Inc., 2008 U.S. Dist. LEXIS 27598 (E.D.N.Y. Mar. 31, 2008); Guzman v. VLM, Inc., 2008 U.S. Dist. LEXIS 15821 (S.D.N.Y. Mar. 2, 2008); Pajaczek v. Cema Constr. Corp. 2008 NY Slip Op 50386U (Sup.Ct.N.Y.Co. Feb. 21, 2008); De La Cruz v. Caddell Dry Dock & Repair Co., Inc., Index No.: 26220-2002 (Sup.Ct. Bronx.Co. Jan. 9, 2007); Brandy v. Canea Mare Construction, Inc., 4 A.D.3d 512 (2nd Dept. 2006); Rodriguez v. Apple Builders & Renovators, Inc., et al., Index No.: 114971-2005 (Sup.Ct.N.Y.Co. Nov. 1, 2006); Hoffman v. New York Stone Co., Index No.: 111823-2005 (Sup.Ct.N.Y.Co. Sept. 29, 2006); Wysocki v. Kel-Tech Construction, Inc., Index No.: 603591-2003 (Sup.Ct.N.Y.Co. Sept. 26, 2005); Velez v. Majik Cleaning Serv., 2005 U.S. Dist. LEXIS 709 (S.D.N.Y. Jan. 19, 2005); Alfaro v. Vardaris Tech, Inc., 69 A.D.3d 436 (1st Dept. 2010); Barone v. Safway Steel Products, Inc., 2005 WL 2009882 (E.D.N.Y. 2005); Brunson v. City of New York, 94 Civ. 4507 (S.D.N.Y.); Andrejuk v. National Environmental Safety Co. Inc., 94 Civ. 4638 (S.D.N.Y.); Pesantez v. Boyle Environmental Services, Inc., Index No. 128988/93 (Sup. Ct. N.Y. Co. 1998) (Cahn, J.), *aff'd* 251 A.D.2d 11, 673 N.Y.S.2d 659 (1st Dept. 1998); Sullivan v. True Plumbing and Heating Corp., et al., Index No. 600409/95 (Sup Ct. N.Y. Co. 1997) (Gammerman, J.), *aff'd sub. nom.*, Sullivan v. International Fidelity Co., 225 A.D.2d 128, 679 N.Y.S.2d 391 (1st Dept. 1998).

8. Founding partner Lloyd Ambinder is a 1989 graduate of Brooklyn Law School and has exclusively practiced as an attorney in litigation of wage and hour claims. Lloyd has litigated in excess of 500 wage & hour cases, on behalf of at least 20,000 workers, including numerous high profile class actions that have been reported in the New York Daily News, the New York Post and the New Jersey Star Ledger. Lloyd has also argued a number of

first impression cases which have had a lasting influence on employment law in New York and New Jersey. Lloyd has been a panelist at symposiums sponsored by the National Alliance For Fair Contracting, the National Conference of Unions and Employee Benefit Funds, the New York County Lawyer's Association, and the Nassau County Bar Association, where he lectured on public contracting and labor law, class actions, and prevailing wage and overtime law. Lloyd is rated as an "AV Preeminent Attorney" by Martindale Hubbell for Ethical Standards and Legal Ability. Mr. Ambinder bills at a rate of \$525.00 per hour.

9. Of counsel Michael Bauman graduated from Benjamin N. Cardozo School of Law in 1990 and received an L.L.M. from New York University School of Law in 1997 and has practiced exclusively in labor and employment and employee benefits litigation. Mr. Bauman joined V&A in 2011. Prior to joining Virginia & Ambinder, LLP, Mike was a partner at Friedman & Wolf. Mr. Bauman is a Member of the Board of Directors of the Cornell University School of Industrial and Labor Relations Alumni Association and a Member of the Community Advisory Board of New York Public Radio where he advises on employment matters. Mr. Bauman has extensive trial experience in both Federal and New York State courts. Mr. Bauman bills at a rate of \$495.00 per hour.
10. I am a 1997 graduate of West Virginia State University and a 2004 graduate of the University of Baltimore School Of Law. I became a partner at V&A in January 2015. I have been practicing for over 10 years exclusively in litigation of employment and wage and hour claims and have represented tens of thousands of workers. I also routinely serve as V&A's appellate counsel and have successfully won multiple appeals in the First and Second Departments. Prior to joining V&A I clerked for the Honorable Timothy E.

Meredith of the Court of Special Appeals in Annapolis, Maryland. I have authored several articles on employee rights, including an article on the rights of unpaid interns that was recently published in U.S. News & World Report. I have been a panelist at multiple symposiums lecturing on minimum wage, overtime laws and class actions. I am also a board member of the Autism Legal Foundation, Inc., a non-profit organization where I provide counsel related to discrimination in housing, employment and other areas faced by adults on the autism spectrum. I billed at a rate of \$375.00 to \$395.00 per hour as an associate and \$425.00 per hour as a partner.

11. Associate Leonor Coyle is a 2006 graduate of Fordham University School of Law. Leonor is a recipient of the Archibald R. Murray Cum Laude Award for her commitment to public service. Leonor has represented tens of thousands of workers in employment related matters. Leonor is fluent in Spanish and regularly speaks about employment issues facing immigrant populations at the Mexican, Guatemalan, Ecuadoran, El Salvadoran, and Honduras consulates. Prior to joining V&A, Leonor worked as an Assistant District Attorney for the Suffolk County District Attorney's Office. She has extensive courtroom experience, and has tried numerous bench and jury trials. Ms. Coyle billed at a rate of \$350.00 to \$395.00 per hour.
12. Senior associate James Murphy is a 2001 graduate of the Cornell University School of Industrial and Labor Relations, and a 2004 graduate of Fordham University School of Law. Mr. Murphy works on litigating complex wage and hour class actions and specializes in representing workers seeking unpaid prevailing wages on publicly financed construction projects. Mr. Murphy routinely represents V&A at the appellate level and successfully argued a case of first impression before the New York Court of Appeals. Mr. Murphy has

been a guest lecturer at the Nassau County Bar Association teaching Continuing Legal Education classes in wage and hour law. Prior to joining V&A, Mr. Murphy worked on union organizing campaigns for international unions such as the United Auto Workers and the former Union of Needletrades and Industrial Textile Employees. Mr. Murphy billed at a rate of \$375.00 to \$395.00 per hour.

13. Associate Kara Miller (né Belofsky) is a graduate of Vassar College and Boston University School of Law. She has been practicing as an attorney since 2008 exclusively in litigation of employment and wage and hour claims. Prior to joining Virginia & Ambinder, Mrs. Miller was a labor and employment litigator at Morgan, Lewis, & Bockius in New York City. Mrs. Miller provides *pro bono* counsel on employment issues to cancer patients and providers affiliated with the Integrated Cancer Care Access Network (ICCAN). Ms. Miller has also served as trial counsel and bills at a rate of \$395.00 per hour.
14. Associate Jack Newhouse has been employed by V&A since 2012, first as a paralegal while he obtained his law degree at St. John's Law School, and as an attorney since his admission in 2013. Prior to joining V&A, Mr. Newhouse interned for the National Labor Relations Board of Region Two and the Equal Employment Opportunity Commission. Mr. Newhouse has been published by Forbes for his article on the impact of unpaid internship lawsuits on the internship job market. Mr. Newhouse billed out at a rate of \$150.00 per hour prior to obtaining his law degree and at \$200.00 thereafter.
15. Associate Alison Genova is a 2013 graduate of Fordham University School of Law where she received the Archibald R. Murray Public Service Award. Prior to joining V&A, Alison interned at the Queens County District Attorney's Office and the Kings County District Attorney's Office. Ms. Genova billed out at a rate of \$195.00 per hour.

16. Maria Tokarz is a forensic accountant who has been working at V&A mainly on forensic wage and hour underpayment analysis for over 5 years. Ms. Tokarz received a Bachelor of Science degree in Accounting from Hunter College of the City University of New York in 2008, and has since obtained the following professional licenses: Certified Public Accountant, Certified Fraud Examiner, and Certified Anti-Money Laundering Specialist. Ms. Tokarz obtained her certifications while working as a forensic accountant at Ernst & Young LLP in the Fraud Investigation and Dispute Services department. Ms. Tokarz is a member of the Association of Certified Fraud Examiners and the Association of Certified Anti-Money Laundering Specialists. Ms. Tokarz bills out at a rate of \$225.00 per hour.
17. Ines Cruz is a paralegal and Spanish language translator who has been working at V&A since October 2013. Ms. Cruz is an admitted attorney and notary in Guatemala, and has an L.L.M. degree from Fordham University. Ms. Cruz bills out at a rate of \$125.00 per hour.
18. Izabela Gardocka is a paralegal and Polish language translator who has been working at V&A since 2011. Ms. Gardocka graduated in December 2014 from Borough of Manhattan Community College with an A.A.S. in accounting, and is currently enrolled in a bachelor's and master's program at Baruch College seeking a B.B.A in accounting. Ms. Gardocka bills out at a rate of \$125.00 per hour.
19. Yeskenia Polanco is a former paralegal and Spanish language translator who worked at V&A from 2007 to 2014 and billed out at a rate of \$100.00 to \$125.00 per hour.
20. Konstancja Maleszyńska is a former paralegal and Polish language translator who worked at V&A from 2011 to 2014. Ms. Maleszynska holds a Bachelor of Arts degree in English philology from Adam Mickiewicz University in Poznań, Poland and a Master of Arts

degree in English from Fordham University. Ms. Maleszyńska billed out at a rate of \$100.00 to \$125.00 per hour.

21. Iwona Ner is a paralegal and Polish language translator who has been working at V&A since 2010. Ms. Ner billed out at a rate of \$100.00 to \$125.00 per hour.
22. Laura Birnbaum is a former associate of V&A who was admitted in 2013.
23. Richard Epstein is a 2010 graduate of Brooklyn Law School and formerly worked for V&A as a paralegal while attending law school and as an attorney. Mr. Epstein billed at a rate of \$125.00 per hour for his work prior to being admitted.
24. Marta Nadgorska, Eric Jagielski, Eugene Ubawike, Venus Velez, Isabel Gardocki, Marissa Levy, Magdalena Kalinowska, Amanda Saw, Veronika Nelson, Eddy Rodriguez, Anuradha Golder, Sumana Ramakrishnan, and Eddy Chan are current and former V&A paralegals who billed out at a rate of \$100.00 to \$125.00 per hour.
25. Any travel time during which no other legal work took place was billed at half the regular hourly rate.

WHEREFORE, Plaintiffs respectfully request this Court grant Plaintiffs' application for attorneys' fees in the amount of \$644,524.50 and costs in the amount of \$12,701.61, and award such further relief as this Court sees fit.

Dated: New York, New York
June 16, 2015

VIRGINIA & AMBINDER, LLP

By: _____/s/_____

LaDonna M. Lusher, Esq.
40 Broad Street, 7th Floor
New York, New York 10004
Tel: (212) 943-9080
Fax: (212) 943-9082